IN THE
SUPREME COURT OF MISSOURI

No. SC85225

THOMAS G. (JERRY) THOMPSON, et al.,
Appellants,
v.
CLARK HUNTER, MORGAN COUNTY COLLECTOR, et al.,
Respondents.

On Petition for Review from the
Morgan County Circuit Court, 26th Judicial Circuit
Honorable Mary Dickerson

BRIEF OF AMICI CURIAE DAVID C. HUMPHREYS AND TAMKO ROOFING PRODUCTS, INC.

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INTEREST OF AMICI CURIAE

David C. Humphreys is a resident of Joplin, Missouri and a taxpayer who has paid real property taxes in excess of that allowed by the Hancock Amendment. TAMKO Roofing Products, Inc. is a Missouri corporation with its principal place of business in Joplin, Missouri. TAMKO has also paid real property taxes in excess of that allowed by the Hancock Amendment. Humphreys and TAMKO are plaintiffs in a case pending in the Circuit Court of Jasper County, Missouri who, like the plaintiffs in the instant case, seek to enforce the Hancock Amendment through declaratory relief and a timely-filed statutory tax refund claim. Thus, amici have a direct interest in the outcome of this case.

ISSUES PRESENTED

This brief focuses on a procedural issue:

> Missouri law provides that a tax refund action is timely if the taxes are paid under protest and the refund action is filed within 90 days of the protest. Is a declaratory judgment action premised on the same issue as a refund action timely if it is filed in conjunction with a timely-filed refund action?

Amici also briefly address the substantive issue in this case and its impact on taxpayers in Missouri and Jasper County:

> The Hancock Amendment established a limitation on the amount of revenue a governmental entity can collect based, in part, on the previous year's revenue. The limit may be exceeded only with voter approval. Amendment 2 changed the maximum tax rate for certain school districts to $2.75, but this ceiling may be further limited by other law. Can a school district set its rate at $2.75 and thus generate revenue in excess of that allowed by the Hancock Amendment without voter approval?

ARGUMENT

The taxpayers here seek, *inter alia*, a declaration that the defendant school district is required to comply with the tax revenue limitation found in article X, section 22 of the Missouri Constitution (the "Hancock Amendment"). Along with declaratory relief, the taxpayers seek a refund (pursuant to section 139.031, RSMo 2000) of the 2001 taxes they overpaid as a result of the school district's failure to comply with the Hancock Amendment. In spite of the fact that the circuit court found that the taxpayers' refund action was "properly lodged and preserved," the court dismissed the taxpayers' claims for declaratory relief because they were not asserted until after the taxes became due and payable. No Missouri statute or case law supports this result. In fact, under relevant Missouri Supreme Court authority, a declaratory judgment action seeking enforcement of the Hancock Amendment should not be dismissed as untimely even if the taxpayer does not comply with section 139.031.

A declaratory judgment action seeking enforcement of the Hancock Amendment need not be filed before taxes become due and payable to be timely.

A. Taxpayers have a constitutional right to enforce the Hancock Amendment, independent of any statutory requirements.

This Court has specifically held that Missouri's statutory tax refund procedure does not govern the remedies found in article X of the Missouri Constitution. *City of Hazelwood v. Peterson*, 48 S.W.3d 36, 40-41 (Mo. banc 2001). Instead, under article X, section 23, the "people of Missouri have reserved to themselves the constitutional right to enforce the Hancock Amendment, which operates as a wholly independent mechanism for the refund of unconstitutional taxes." *Id.* at 41. In *City of Hazelwood*, the defendants argued that the trial court erred in certifying the individual plaintiffs' claims as a class action because Missouri statutory law does not permit class actions for tax refunds. This Court held that, under their constitutional right to enforce the Hancock Amendment, the plaintiffs could pursue a Rule 52.08 class action to recover excess tax payments made during a challenge to the election which approved the tax increase but which was ultimately set aside as void. *Id.*

While the *City of Hazelwood* Court did not explicitly address the timeliness of the class action claim, the individual plaintiffs filed suit on January 3, 1997, after the taxes were due and payable, and the opinion contains no indication that the individuals paid their taxes under protest as section 139.031 would require. This reinforces the holding that taxpayers have an independent constitutional right to enforce the Hancock Amendment. In contrast to the individual plaintiffs, the plaintiff city remitted the tax payments under protest and brought suit on February 13, 1997. The Court did state that the city "timely filed suit," but because the city was not a "taxpayer" and therefore lacked standing to sue under section 139.031, *see id.* at 40, the Court could not have meant timely under Missouri's statutory refund procedure.

In *Ring v. Metropolitan St. Louis Sewer District*, 969 S.W.2d 716 (Mo. banc 1998), which predates *City of Hazelwood*, the plaintiffs filed a class action seeking a declaration that each class member was entitled to a refund of an increased wastewater

fee that had been unconstitutionally imposed without voter approval. The trial court dismissed the case because the plaintiffs failed to comply with the statutory refund procedures mandated by section 139.031 and thus their claims were barred by sovereign immunity. *Id*. at 717. This Court assumed, arguendo, that section 139.031 applied to the wastewater fees, but held that article X, section 23 operates as a waiver of sovereign immunity and allows taxpayers to seek a refund of taxes collected in violation of the Hancock Amendment. *Id*. at 718-19. According to the Court in *Ring*, the Hancock Amendment can be enforced in two ways: one, by seeking an injunction enjoining the collection of a tax while a determination of its constitutionality is pending, or two, by a "timely" action to seek a refund of the unconstitutional increase. Although the plaintiffs had not complied with section 139.031, this Court stated that the case before it fell into the second category—that is, the Court found that the plaintiffs' refund action was timely even though they did not comply with the statutory requirements.[1] The Court pointed out that, notwithstanding other provisions of the Missouri Constitution or other law, any taxpayer has standing to sue to enforce the Hancock Amendment under article X, section 23. *Id*. at 718. Thus, *Ring* stands for the proposition that the remedies provided by article X, section 23 are independent of Missouri's statutory refund procedures, a proposition that was explicitly adopted by this Court in *City of Hazelwood*.

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[1] The use of the word "timely" in *Ring* has been construed to mean timely under section 139.031, *e.g.*, *Green v. Lebanon R-III Sch. Dist.*, 13 S.W.3d 278, 287 (Mo. banc 2000) (Wolff, J., concurring); *Metts v. City of Pine Lawn*, 84 S.W.3d 106, 108-09 (Mo. Ct. App. 2002), but that cannot possibly be an accurate interpretation, given the fact that the plaintiffs in *Ring* had not complied with the statutory requirements. In fact, the plaintiffs filed their class action over three years after the defendant began charging the increased wastewater fee. *See Beatty v. St. Louis Sewer Dist.*, 914 S.W.2d 791, 793-94 (Mo. banc 1995) (defendant began charging increased fee July 1992, case decided December 1995); *Ring*, 969 S.W.2d at 717 (plaintiffs filed class action after *Beatty* decision). The Court nonetheless found that they fell into the category of those bringing a timely action to seek a refund of the unconstitutional taxes.

While *Ring* discussed enforcing the Hancock Amendment through an action seeking an injunction or a refund, in an earlier case, the Court discussed a declaratory judgment as a possible remedy for a violation of the Hancock Amendment.[2] *See Fort Zumwalt Sch. Dist. v. State*, 896 S.W.2d 918, 923 (Mo. banc 1995). In *Fort Zumwalt*, the plaintiffs asserted that the state had violated the Hancock Amendment by failing to maintain the same proportion of aid for special education services as it provided in 1980-81 and sought a money judgment from the state. The Court held that a money judgment was not essential to enforce the right being violated, and that a money judgment would thwart one of the purposes of the Hancock Amendment (*i.e.*, to limit expenditures by state and local government) by requiring the state to spend more money.[3] *Id.* This Court held that a declaratory judgment relieving a school district of the duty to perform an inadequately funded required service would be an adequate remedy for the state's violation of the Hancock Amendment.

Read together, *Fort Zumwalt*, *Ring*, and *City of Hazelwood* must mean that taxpayers have an independent right to declaratory relief under article X, section 23 of the Missouri Constitution. Nowhere in that section does it require an enforcement action to be brought before the end of the tax year in question. If remedies for Hancock Amendment violations do not depend on statutory procedures, even a declaratory judgment action that was not filed in conjunction with a timely-filed section 139.031 action could be timely.[4] But here, the plaintiffs went beyond what is required for their

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[2] In *Ring*, the plaintiffs' refund claim actually sought a declaration and order that the class members were entitled to a refund. 969 S.W.2d at 717. *See also State ex rel. St. Louis v. Litz*, 653 S.W.2d 703 (Mo. Ct. App. 1983) (declaratory relief sought for alleged violation of Hancock Amendment).

[3] A judgment requiring a school district to refund money it collected illegally would certainly serve one of the purposes of the Hancock Amendment—to protect taxpayers from the government's ability to increase its tax revenues without voter approval.

[4] Research discloses no Missouri case that has discussed the appropriate statute of limitations for an action seeking to enforce the Hancock Amendment. The plaintiffs in *Green v. Lebanon R-III School District* argued that Missouri's 10-year catch-all statute of limitations applied to their claims, but the court of appeals rejected the argument because the plaintiffs failed to cite authority supporting their argument or

declaratory judgment action by seeking a refund pursuant to section 139.031, complying with that statute's requirements, and at the same time, seeking declaratory relief.

B. <u>Even if the Court were persuaded by Missouri cases addressing the timeliness of other Hancock Amendment challenges, these cases do not require dismissal of a declaratory judgment action filed in conjunction with a timely-filed section 139.031 claim.</u>

A taxpayer may protest taxes assessed by filing a protest with the collector at the same time the taxpayer pays the taxes. The taxpayer must file a refund action against the collector in the circuit court within 90 days after filing the protest or waive the right to do so. Sections 139.031.1, 139.031.2, RSMo 2000. Where the taxpayer is protesting the taxes levied on the grounds that they violate section 137.073 (an implementing statute for the Hancock Amendment) and the court issues an order requiring a taxing authority to revise the tax rates as provided in that section, all taxpayers, even those who did not pay under protest, have erroneously paid and are entitled to refunds. Section 137.073.9, RSMo 2000. Thus, Missouri law specifically contemplates an action seeking a declaratory judgment brought in conjunction with a statutory refund action.[5]

Even if the Court were to hold that the statutory refund procedures do apply to a Hancock Amendment challenge and overturn its earlier case law, nothing in section 139.031 could be construed to require a declaratory judgment action premised on the identical issue as a refund action to be filed *before* a timely-filed refund action. There should be no doubt that a declaratory judgment action seeking enforcement of the Hancock Amendment is timely if it is asserted after the year's taxes become due and payable and is filed in conjunction with a statutory refund action brought within the 90-

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explain why authority was not available. 87 S.W.3d 365, 368 (Mo. Ct. App. 2002).

[5] Without a declaratory judgment, the mechanism by which other taxpayers who paid taxes at a rate declared to be erroneous may collect refunds would not be triggered. This could violate the uniform taxation requirements of the Missouri Constitution, *see* Mo. Const. art. X, § 3, and it would be fundamentally unfair to those taxpayers who could not receive a refund because a declaratory judgment under section 137.073 was not forthcoming. Also, if a court addressing a Hancock Amendment violation authorized a refund without addressing the declaratory relief sought, the taxing authority could continue to violate the Missouri Constitution, forcing taxpayers to bring individual refund actions every year.

day period provided by section 139.031. The Missouri case law which relies on Judge Wolff's concurrence in *Green v. Lebanon R-III School District*, 13 S.W.3d 278 (Mo. banc 2000) ("*Green I*"), is inapposite because none of the cases involve a declaratory judgment action filed in conjunction with a timely-filed section 139.031 action.

No Missouri case has held that a declaratory judgment action is untimely when there has been timely notice in the form of a written protest filed by December 31 of the tax year in question followed by a lawsuit filed within 90 days of the written protest. In this case, the Court of Appeals distinguished Judge Wolff's concurrence in *Green I* and the subsequent decisions of *Koehr v. Emmons*, 55 S.W.3d 859 (Mo. Ct. App. 2001) ("*Koehr I*"), and *Green v. Lebanon R-III School District*, 87 S.W.3d 365 (Mo. Ct. App. 2002) ("*Green II*"), and correctly concluded that a taxpayer may seek declaratory relief in conjunction with a timely-filed section 139.031 claim:

> Neither *Green* [*I*] nor subsequent cases, however, have held that a declaratory judgment action brought in conjunction with a timely § 139.031 action must be commenced by December 31…. Requiring taxpayers to file a declaratory judgment action by December 31, when we have already determined that the § 139.031 action on which the refund is based can be filed within 90 days after paying taxes under protest, would be absurd.

Thompson v. Hunter, No. WD 61742, 2003 WL 345371, at *5-6 (Mo. Ct. App. Feb. 18, 2003).

In *Koehr I*, the Missouri Court of Appeals did not hold that a declaratory judgment lawsuit must be filed by December 31 of the tax year in question. The court held that, with the exception of the plaintiffs' timely-filed refund action for the 1997 taxes they paid under protest, the other claims for which the plaintiffs sought class certification were not timely filed. *Koehr I*, 55 S.W.3d at 864. The timely claim was resolved against the plaintiffs because, even assuming their contentions regarding which rounding method was constitutionally required were correct, the insubstantial amount allegedly overpaid was not a proper foundation for finding a violation of the Hancock Amendment. *Id*. The plaintiffs' initial petition was timely filed in March 1998, after the plaintiffs had paid their 1997 taxes under protest, but it did not seek declaratory relief; the declaratory counts

were added in an amended petition filed in July 1998. *Id.* at 861. The *Koehr I* court did not specifically address the timeliness of the declaratory counts.

In the second *Koehr* case, the Missouri Court of Appeals did not address whether a declaratory judgment action was timely filed in the context of a taxpayer's payment of taxes under protest and subsequent timely filing of a refund action. *Koehr v. Emmons*, 98 S.W.3d 580 (Mo. Ct. App. 2003) ("*Koehr II*"). In *Koehr II*, the taxpayers, who sought refunds for taxes paid in 2000, did not file a timely written protest by December 31, 2000 and did not file their lawsuit until April 13, 2001. *Id.* at 582. The court upheld the trial court's dismissal of the plaintiffs' refund claims for failing to comply with Missouri's statutory refund procedures, in contradiction to *City of Hazelwood*'s holding that taxpayers have a separate constitutional right to enforce the Hancock Amendment, a mechanism for obtaining a refund wholly independent of the statutory requirements. *Koehr II*, 98 S.W.3d at 583-84. The plaintiffs argued that, even if they were barred from obtaining a refund, they could still prevail on their Hancock Amendment claims for declaratory judgment and injunctive relief. The *Koehr II* court found that they had failed to request such relief in their petition. *Id.* at 584. *Koehr II* does not hold that a declaratory judgment action must be filed before taxes become due and payable when it is filed in conjunction with a timely-filed section 139.031 action.

In *Green v. Lebanon R-III School District*, 87 S.W.3d 365 (Mo. Ct. App. 2002) ("*Green II*"), the Missouri Court of Appeals followed *Koehr I* and affirmed the dismissal of the taxpayers' refund claims as untimely. The taxpayers in *Green II*, who sought refunds for the tax years 1994-1998, apparently did not pay their taxes under protest during those years and did not file their claims before December 31 of the tax years at issue. *Id.* at 367; *see also Green I*, 13 S.W.3d at 283. *Green II* does not address the timeliness of a declaratory judgment action.

Koehr I, *Koehr II*, and *Green II* all rely on Judge Wolff's concurrence in *Green I*. In *Green I*, the plaintiff taxpayers sought refunds of five years of back property taxes, but timeliness was not an issue before the Court, and the parties had neither briefed nor argued the issue. 13 S.W.3d at 283-84; *id.* at 286 (Price, C.J., concurring). Judge Wolff nonetheless expressed concern regarding the timeliness of the plaintiffs' claims and wrote at length about the issue. *Id.* at 286-90 (Wolff, J., concurring).

That concern was that a challenge to tax rates brought years after the taxes were collected would adversely impact school districts which had already spent the money at issue: "It is well to interpret and enforce the requirements of the constitution, but it is quite another matter to disrupt settled expectations years after a constitutional violation has purportedly occurred." *Id.* at 287. Judge Wolff repeated this concern several times in the context of discussing section 137.073, which requires a taxing authority to refund taxes erroneously paid when a court orders it to revise the tax rate in accord with the section, stating that the section does not "enable lawsuits to be commenced years after the tax year in question" and that the Court should not construe the section "as authority for bringing class actions for refunds years after the taxes have been set, and collected, and used in the determination of state school aid." *Id.* at 290. In

conjunction with his concern regarding a "years later" challenge to a school district's tax rate, Judge Wolff also seemed to be concerned with notice to the school district. *See id.* at 288.

The premise of Judge Wolff's concurrence on the timeliness issue—that whether taxpayers have a refund remedy depends on the statutory scheme, not on the Missouri Constitution—has been undermined by this Court's decision in *City of Hazelwood*, which held that Missouri's statutory procedures do not govern the remedies found in article X of the Missouri Constitution.[6] Also, Judge Wolff's apparent conclusion that refunds are available only when a lawsuit is filed before December 31 of the tax year in question finds no support in the statutory scheme on which he relied. Section 139.031 allows a lawsuit to be filed up to 90 days after the taxpayer pays his taxes under protest; only the protest need be made before December 31.

In any event, Judge Wolff's concerns regarding a "years later" constitutional challenge and lack of notice to the school district are not at issue in this case. A timely-filed written protest necessarily constitutes a timely challenge to the tax rate. Where notice has been given by December 31, the purpose of alerting a school district to the possibility that it has miscalculated its tax rate has been served. Requiring a taxpayer who has complied with the statutory requirements for a refund action to file a declaratory judgment action before the end of the tax year is illogical. This Court should hold that, where notice of a refund claim is provided via a written protest submitted along with the taxpayer's payment of taxes by December 31 of the year in question and this protest is followed by a lawsuit within 90 days, a declaratory judgment action, brought along with the refund action, is timely.

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[6] Judge Wolff also read *Fort Zumwalt* to say that article X, section 23 was not a consent to suit for money judgment, but the Court in that case implied that it would find a waiver of sovereign immunity if a money judgment were essential to enforce the right in question, *see Fort Zumwalt*, 896 S.W.2d at 923, and *City of Hazelwood* specifically allowed a refund suit under article X, section 23. *See City of Hazelwood*, 48 S.W.3d at 41.

School districts must comply with the Hancock Amendment when setting their tax rates.

The Hancock Amendment, approved by Missouri voters in 1980, established a revenue limitation which requires school districts (and other local taxing authorities) to modify their tax rates to ensure their revenues do not exceed constitutional limitations. *See* Mo. Const. art. X, § 22(a). Amendment 2, approved by Missouri voters in 1998, changed the tax rate ceiling for certain school districts but also specifically provided that the ceiling could be further limited by law. *See* Mo. Const. art. X, § 11(c). The language of these provisions is clear, and school districts can and must comply with both.[7]

A. The plain language of Amendment 2 does not exempt school districts from the requirements of the Hancock Amendment.

Unless a higher tax rate is approved by voters, the Hancock Amendment limits the tax revenue in a given year to the amount of revenue received in the immediately preceding year, plus an allowance for the value of new construction and a cost-of-living increase. *See* Mo. Const. art. X, § 22(a). Because local property tax revenue equals the tax rate multiplied by the assessed property value, when assessed property values increase at a rate faster than inflation, the Hancock Amendment requires a school district to reduce its tax rate to collect the same amount of revenue as when property values were lower.

Amendment 2 amended article X, section 11 of the Missouri Constitution, raising from $1.25 to $2.75 the maximum tax rate that certain school districts may levy without voter approval. Even after Amendment 2's passage, the relevant text continued to say "that the rates herein fixed…may be further limited by law." Mo. Const. art. X, § 11(b) & (c). This provision clearly provides that the ceiling it sets may be limited by other laws. *Id.* Thus, under the express language adopted by Amendment 2, the tax rate ceiling of $2.75 is further limited when a school district's compliance with the tax revenue limitation established by the Hancock Amendment requires a lower rate. If the Court reaches the merits of the claims in this case, it should hold that this plain language controls. *See State v. Rowe*, 63 S.W.3d 647, 649 (Mo. banc 2002) ("When the words are

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[7] Even if the Court were to find some ambiguity in the interaction of the Hancock Amendment and Amendment 2, the well-settled principle of Missouri law that ambiguities should be resolved in favor of the taxpayer requires any ambiguity be resolved to give continuing effect to the Hancock Amendment. *See, e.g., Old Warson Country Club v. Dir. of Revenue*, 933 S.W.2d 400, 403 (Mo. banc 1996).

clear, there is nothing to construe beyond applying the plain meaning of the law."); *City of Hazelwood*, 48 S.W.3d at 39 (plain language of constitutional amendment controls).

The Hancock Amendment does not conflict with Amendment 2. They are two separate tax limitations, both of which can be given effect. The Hancock Amendment is a tax *revenue* limitation. Amendment 2 revised a separate, pre-existing tax *rate* limitation. Both provide tax ceilings for local taxing authorities, who simply must abide by the lower of the two ceilings in a given year. *Cf.* Section 137.073.4(2), RSMo 2000 (where tax rate ceiling calculated under statutory formula differs from tax rate ceiling calculated under Hancock Amendment's formula, lower of two rates applies in any given year); *Green I*, 13 S.W.3d at 286.

The trial court in this case dismissed the plaintiffs' petition, holding that Amendment 2 authorized the defendant school district to adopt an operating tax levy of $2.75 without voter approval. In effect, the court held that Amendment 2 repealed the Hancock Amendment and section 137.073 as applied to school districts. This Court should not accept an interpretation that would result in the implicit repeal of these constitutional and statutory provisions. Repeal by implication is disfavored: because the Hancock Amendment and Amendment 2 can be reconciled, both must be given effect. *See St. Charles County v. Dir. of Revenue*, 961 S.W.2d 44, 47 (Mo. banc 1998).

Statewide, the failure of school districts to comply with the Hancock Amendment has had an enormous effect on taxpayers. In 2002, school districts collected more than $26 million from Missouri taxpayers over and above the amount allowed by the Hancock Amendment. *See* Appendix at A1, State Auditor Claire McCaskill, *Review of 2002 Property Tax Rates*, Report No. 2002-123, at 146-49 (Dec. 31, 2002). The obvious purpose of the Hancock Amendment and its implementing statutes was "to prevent 'windfalls' in school taxes to the school districts merely because the assessed valuation of the real property in a county increases." *Mo. Pac. R.R. Co. v. Kuehle*, 482 S.W.2d 505, 509 (Mo. 1972). Jasper County, where amici are located, provides a dramatic example of how this purpose has been obliterated. Jasper County's 2001 property appraisal (the first appraisal since 1997) increased property taxes by $8.38 million, and over 90% of that increase went to school districts. *See* Appendix at A6, Susan Redden, *Schools Reaping Windfall*, Joplin Globe, Jan. 21, 2002, at 1A. This "windfall" was essentially locked in for the 2002 tax year, the year at issue in the Jasper County lawsuit, since the school districts relied on the 2001 appraisals for purposes of the 2002 taxes.

B. Even if the passage of Amendment 2 could somehow be viewed as voter approval to exceed the Hancock Amendment's revenue limitations, such approval cannot be viewed as a permanent exemption from compliance with article X, section 22(a) of the Missouri Constitution.

The defendant school district in this case argues that voter approval of Amendment 2 in 1998 constituted voter approval for exceeding the Hancock Amendment's tax revenue limitation. Even if that were the case, a 1998 vote cannot permanently exempt school districts from the Hancock Amendment's requirements. Thus, even assuming that a school district that set its tax rate at 2.75 in 1999 did not violate the Hancock Amendment because it had "voter approval" for that rate, a school district that continues to set its tax rate at 2.75 in subsequent years, when the assessed values of property increase, without regard to the Hancock Amendment's revenue limitations, is violating the Missouri Constitution.

If Amendment 2 trumps the Hancock Amendment in perpetuity, every time property is reassessed and increases in value at a pace that exceeds inflation, school districts will receive increased revenues that are completely unrelated to any increase in their expenses. The Hancock Amendment's purpose was "to erect a comprehensive, constitutionally-rooted shield erected to protect taxpayers from government's ability to increase the tax burden above that borne by the taxpayers on November 4, 1980." *Ft. Zumwalt*, 896 S.W.2d at 921. Allowing school districts to ignore the Hancock Amendment in perpetuity by virtue of Amendment 2 would render that shield ineffective without any notification to the voters who approved Amendment 2. If this Court decides to reach the merits of the taxpayers' lawsuit, it should not countenance the defendant school district's attempt to evade the constitutional requirements of the Hancock Amendment.

CONCLUSION

This Court should reject the unsupported notion that a declaratory judgment action seeking to enforce the Hancock Amendment must be filed before December 31 of the tax year in question. Even if Article X, section 23 did not provide an enforcement mechanism independent of Missouri's statutory tax refund procedures, a declaratory judgment action filed in conjunction with a refund action that complies with the requirements of section 139.031 must be timely.

Finally, if the Court reaches the merits of the plaintiffs' claims, it should require school districts to comply with the Hancock Amendment, the law that further limits the rates allowed by Amendment 2. While school districts have much-publicized budgetary concerns, these concerns do not provide a reason to violate the will of the people of Missouri, as expressed by the plain language of the Hancock Amendment and Amendment 2.

Respectfully submitted,

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Certificate of Service and Compliance with Rule 84.06

I hereby certify that the Brief of Amici Curiae David C. Humphreys and TAMKO Roofing Products, Inc. complies with Rule 84.06 and consists of 4,719 words, that the accompanying disk has been scanned for viruses and is virus-free, and that a true and accurate copy of the foregoing brief, its attached appendix, and a disk containing the brief were mailed, via U.S. Mail, postage prepaid, this 27th day of June, 2003, to the following attorneys of record in this proceeding:

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